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LEGISLATIVE RESEARCH COMMISSION

MUNICIPAL INCORPORATIONS

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REPORT TO THE 1985 GENERAL ASSEMBLY OF NORTH CAROLINA 1986 SESSION

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May 28, 1986

TO THE MEMBERS OF THE 1985 GENERAL ASSEMBLY (1986 SESSION):

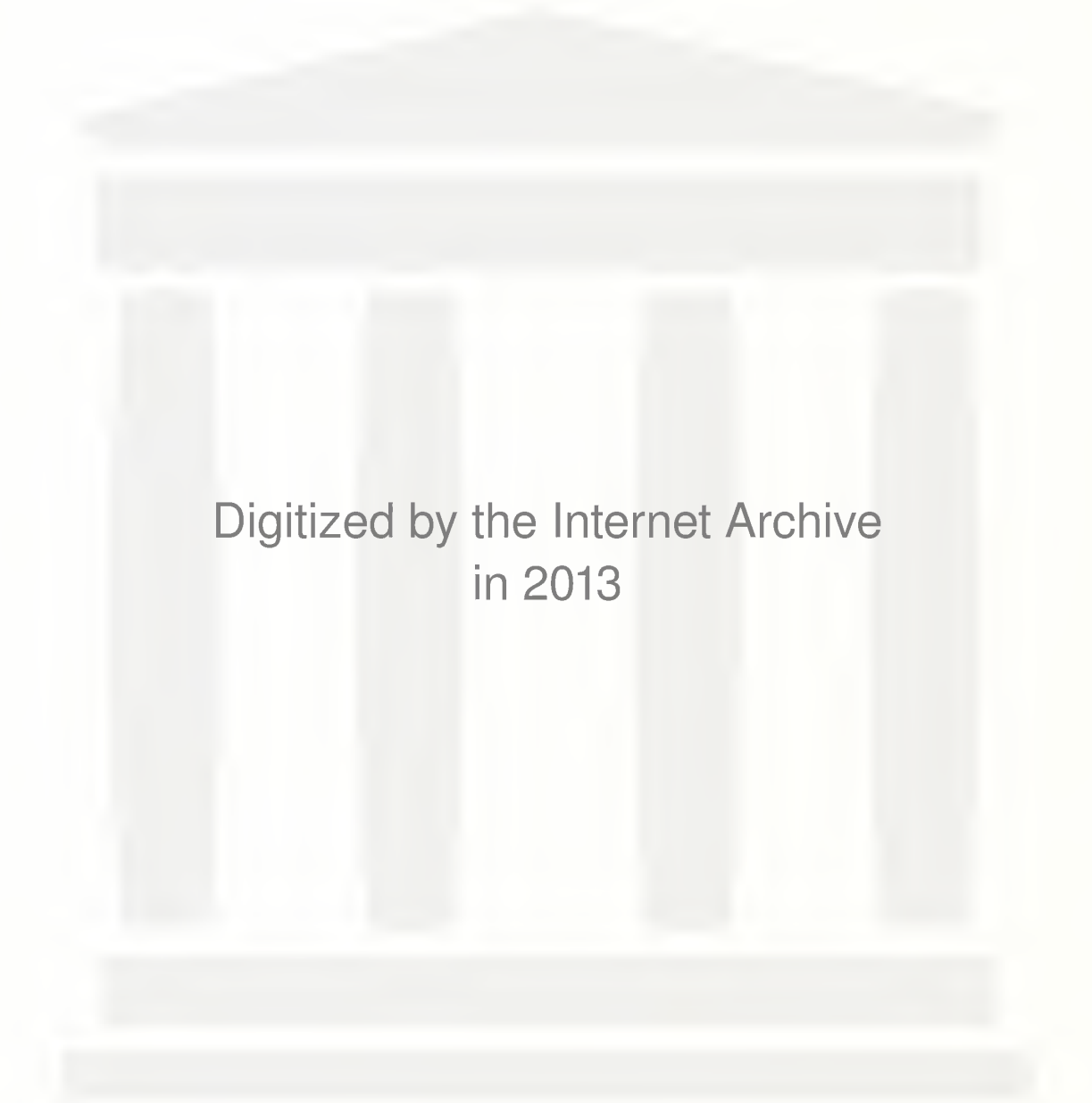
The Legislative Research Commission herewith reports to the 1985 General Assembly (1986 Session) on the matter of municipal incorporations. The report is made pursuant to Chapter 790, Session Laws of 1985.

This report was prepared by the Legislative Research Commission's Committee on Municipal Incorporations, and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey — J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission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LEGISLATIVE RESEARCH COMMISSION

Senator J.J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A.D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has ten additional members, five appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most effective manner" (G.S. 120-20.17(1)).

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given the responsibility for one category of study. The cochairmen of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairmen, one from each house of the General Assembly, were designated for each committee.

The study of Municipal Incorporations was authorized by Section 1(5) of Chapter 790, Session Laws of 1985.

The Legislative Research Commission grouped this study in its Local Government area under the direction of Representative John Church. The cochairmen of the study committee established by the Legislative Research Commission are Senator James E. Ezzell, Jr., and Representative Gordon Greenwood. The full membership of the committee is listed in Appendix A of this report. Chapter 790 authorizing this study and House Joint Resolution 389, which the committee was authorized to consider in determining the scope of the study are attached as Appendices B and C.

COMMITTEE PROCEEDINGS

During the 1983 Session of the General Assembly, Chapter 905 of the Session Laws of that year was passed, authorizing the Legislative Research Commission to conduct certain studies. Section 1(40) of that act authorized a study of the procedure for incorporating municipalities.

In 1983, that study committee met, and took up the question of the status of inactive cities, that is those that had no functioning governments. At the committee's direction, staff surveyed the legislative delegations and county officials about the status of close to 50 inactive cities, asking whether the charters should be repealed. Almost without exception, the local officials and community residents opposed charter repeal, largely for historical reasons. The study committee made no report to the 1985 session of the General Assembly.

After the 1985 Session, the study committee was reauthorized, and looked at two areas, incorporation procedures and the status of inactive cities.

The committee met four times. At its first meeting on December 16, 1985, Committee Counsel presented a report on incorporation procedures in 36 states responding to a survey. A copy of the report is attached as Appendix I. At that meeting, the North Carolina League of Muncipalities presented a position paper on the issue, attached as Exhibit J. The committee directed staff to present a proposal at the next meeting based on ideas discussed at the first meeting.

At the committee's second meeting on February 12, 1986, the committee made tentative decisions to recommend establishment of a permanent legislative commission to review incorporation proposals, and decided to recommend that no incorporation bill could be introduced in the General Assembly until the Commission had made a recommendation. It was felt that such a procedure would allow the General Assembly as well as incorporation proponents to have better information both about the proposed incorporation and its consequences, as well as establishing objective criteria for the Commission to use so as to identify proposed incorporations which might have a negative impact on nearby cities, or could not be sustained under financial analysis.

The Committee also asked its cochairmen to speak to the chairs of the local government committees and urge that no local bills be considered in the General Assembly if the various home rule acts would allow the local government to take the requested action without legislative approval. The Committee asked staff to bring back a proposal to require local governments to file with the state copies of home rule charter amendments that are adopted. Currently, no central registry exists.

At the third meeting on March 13, 1986, the Committee took up a draft bill, adopted amendments, and directed staff to bring back a final draft for approval at the fourth and final committee meeting. The committee also adopted a draft bill concerning filing notice of home rule charter amendments. That bill appears as Appendix G. The committee adopted a bill to make the

definition of a city the same for the city law as well as the county law. The effect of such a bill would be to resolve the legal problems of inactive cities by not repealing their charters, but giving them no recognition under the municipal corporation law or the revenue act. This would resolve problems with county zoning, annexation, and distribution of funds, as well as eliminate ambiguity in the privilege license tax area. The bill, appearing as Appendix H, would also codify a law relating to Powell Bill distributions for cities incorporated before 1945. That section is still valid although it was dropped from the code in 1965, and its absence has caused some confusion.

At the committee's final meeting on April 3, 1986, the Committee adopted a bill and two resolutions relating to incorporation procedures, appearing as Appendices D through F, and adopted this report.

RECOMMENDATIONS

Article VII, Section 1 of the Constitution of North Carolina states in part "The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns..." (See Appendix K for full text of that section)

This section allows the General Assembly to charter a new city by local act, or to delegate the power to charter a city to an administrative agency. The power to delegate is limited because new cities can not be created within specified distances of existing cities as provided in the Constitution except by a three-fifths vote of the General Assembly.

The General Assembly created the Municipal Board of Control (an administrative agency authorized to incorporate new cities) in 1917, abolished it in 1969, reestablished it in 1971, and abolished it again in 1982.

In a report to the General Assembly recommending abolition of the Municipal Board of Control, the Legislative Research Commission stated in 1982 that it "...believes that the granting of a municipal charter is a legislative power which should not be delegated..."[1]

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[1]Legislative Research Commission, Report to the 1981 General Assembly of North Carolina 1982 Session, Separation of Powers at 16.

With three years of experience since abolition of the municipal board of control, the Committee believes existence of a permanent commission to review incorporation proposals, accompanied by statutory standards and guidelines, would assist the General Assembly in carrying out its legislative power to incorporate new cities.

The provisions of the proposed bill attached as Appendix D, come from two main sources: The prior law establishing the municipal board of control, and laws in other states on the same subject (see Appendix I). The Committee felt that such an approach was better at this time than proposing a constitutional amendment to forbid the General Assembly from chartering by local act, even though having such a constitutional prohibition is a widespread practice in the rest of the country.

APPENDIX A

COMMITTEE MEMBERS

COMMITTEE ON MUNICIPAL INCORPORATIONS

Rep. Gordon H. Greenwood
co-chairman

Sen. James E. Ezzell, Jr.
co-chairman

Rep. Ray C. Fletcher

Mr. Elmer Jenkins

Rep. Edith L. Lutz

Sen. Helen Rhyne Marvin

Rep. Dwight W. Quinn

Sen. Aaron W. Plyler

Rep. George S. Robinson

Sen. Kenneth C. Royall, Jr.

Rep. John T. Church, LRC Member

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

CHAPTER 790
SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) Continuation of the Study of Revenue Laws (H.J.R. 17-Lilley),

(2) Continuation of the Study of Water Pollution Control (H.J.R. 141-Evans),

(3) Adolescent Sexuality Teaching (H.J.R. 275-Jeralds),

(4) Continuation of the Study on the Problems of the Aging (H.J.R. 322-Greenwood),

(5) Continuation of the Study of Municipal Incorporations (H.J.R. 389-Greenwood),

(6) School Discipline (H.J.R. 861-Colton),

(7) Bail Bondsmen and Bail Bond Forfeiture (H.B. 967-Watkins),

(8) Preventative Medicine (H.B. 1052-Locks),

(9) Life Care Arrangements (H.B. 1053-Locks),

(10) State Personnel System (H.B. 1064-Wiser),

(11) Long-Term Health Care Insurance (H.B. 1103-Locks),

(12) Itinerant Merchants (H.B. 1170-Lancaster),

(13) Manufactured Housing Zoning (H.B. 1178-Ballance; S.B. 636-Plyler),

(14) Interest Rate Regulation (H.J.R. 1227-Evans),

(15) Underground Storage Tank Leakage Hazards and other ground water hazards (H.B. 1281-Locks),

(16) Mental Patient Commitments (H.J.R. 1313-Miller),

(17) High-Level Radioactive Waste Disposal (H.B. 1373-Diamont; S.B. 655-Hipps),

(18) Stun Guns (H.J.R. 1390-McDowell),

(19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.R. 1393-Hackney),

(20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.R. 1405-Holroyd),

(21) Superintendent of Public Instruction and State Board of Education (H.J.R. 1412-Nye),

(22) Rental Referral Agencies (H.B. 1421-Stamey),

(23) Child Abuse Testimony Study (S.B. 165-Hipps),

(24) Home Schooling Programs (S.J.R. 224-Winner),

(25) Pretrial Release (S.J.R. 297-Winner),

(26) Inmate Substance Abuse Therapy Program (S.J.R. 317-Plyler),
(27) Inmate Work-Release Centers (S.B. 406-Swain),
(28) Community College System (S.B. 425-Martin),
(29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
(30) State Employee Salaries and Benefits (S.B. 514-Jordan),
(31) State Infrastructure Needs (S.B. 541-Royall),
(32) Commercial Laboratory Water Testing (S.B. 573-Taft),
(33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
(34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)
(35) Continuation of the Study of Child Support (S.B. 638-Marvin),
(36) Local Government Financing (S.B. 670-Rauch),
(37) Medical Malpractice and Liability (S.B. 703-Taft),
(38) Marketing of Perishable Food (S.B. 718-Basnight),
(39) Child Protection (S.B. 802-Hipps),
(40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
(41) Satellite Courts (S.B. 850-Barnes),
(42) Substantive Legislation in Appropriations Bills (S.B. 851-Rand),
(43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee.

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

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HOUSE JOINT RESOLUTION 389

Sponsors: Representatives Greenwood; Colton, Nesbitt,* .

Referred to: Rules and Operation of the House,

April 8, 1985

A JOINT RESOLUTION REQUESTING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROCEDURE FOR INCORPORATING MUNICIPALITIES.

Whereas, Section 1 of Article VII of the North Carolina Constitution provides in part that the General Assembly shall provide for the organization and government and the fixing of boundaries of cities and towns; and

Whereas, the only other State constitutional limitation is in that same section where the power to incorporate a city lying within specified distances for an existing city may not be delegated and there is required an extraordinary majority for the General Assembly to incorporate such a city in close proximity to another; and

Whereas, the General Assembly in 1982 abolished the Municipal Board of Control, a quasi-legislative agency that was authorized to incorporate cities if certain standards set down by the General Assembly were met; and

Whereas, the General Assembly has in recent years incorporated many cities and is under increasing pressure to incorporate more; and

Whereas, some of these requests are defensive in nature, because incorporating an area prevents its annexation by another city; and

Whereas, there are already 48 paper cities that were incorporated between 1788 and 1939 that are inactive and have not held elections in many years; and

Whereas, incorporation of a city has many statutory ramifications on zoning, highway funding, distribution of State shared revenue such as intangibles tax, beer and wine tax, Powell Bill, and Federal Revenue sharing; and

Whereas, many persons wishing incorporation may not be aware of this; and

Whereas, incorporation may affect the county government in unintended ways; and

Whereas, with minor exceptions in the areas of annexation procedure (Parts 2 and 3 of Article 4A of G.S. Chapter 160A) power of subpoena (G.S. 160A-80), limits to extraterritorial zoning (G.S. 160A-360), and prostitution (G.S. 14-208) the powers of cities do not depend on population; and

Whereas, other states classify cities according to population; and

Whereas, the 1983 General Assembly, in recognition of these concerns, authorized a Legislative Research Commission study on this issue whose work was not completed;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission is requested to study the process of municipal incorporation,

including the existence of paper cities and inactive cities, the effect of incorporation on road construction procedures, allocation of funds, county governments and other nearby municipalities.

Sec. 2. The study committee appointed under this resolution shall consist of 10 members appointed as follows: The President Pro-Tempore of the Senate shall appoint two members of the Senate, two non-legislators, and one county commissioner appointed from a list of three county commissioners submitted by the North Carolina Association of County Commissioners. The Speaker of the House of Representatives shall appoint two members of the House of Representatives, two non-legislators, and one elected city official appointed from a list of three elected city officials submitted by the North Carolina League of Municipalities.

Sec. 3. The Commission may report to the 1987 Session of the General Assembly and may make an interim report to the 1985 General Assembly, 1986 Second Session.

Sec. 4. This resolution is effective upon ratification.

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*Additional Sponsors: N. J. Crawford.

APPENDIX D

G10LB20Y

Public

ST: Municipal Incorporations.

A BILL TO BE ENTITLED

AN ACT TO CREATE A JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS, AND TO REQUIRE A RECOMMENDATION OF THAT COMMISSION BEFORE A BILL MAY BE INTRODUCED IN THE GENERAL ASSEMBLY TO INCORPORATE A NEW MUNICIPALITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 20.

Joint Legislative Commission on Municipal Incorporations

Part 1. Organization.

<120-158. Creation of Commission. (a) There is created the Joint Legislative Commission on Municipal Incorporations, referred to in this article as "Commission".

(b) The Commission shall consist of eight members, appointed as follows:

(1) The chairman of a House Local Government Committee, designated by the Speaker;

(2) Another House member, appointed by the Speaker;

(3) The chairman of the Senate Local Government and Regional Affairs Committee;

(4) Another Senator, appointed by the President of the Senate;

(5) The Secretary of the Local Government Commission, ex-officio member and chairman;

(6) One person appointed by the Governor, who may not be a member of the General Assembly;

(7) One city manager or elected city official, appointed by the Governor from a list of three eligible persons nominated by the North Carolina League of Municipalities; and

(8) One county commissioner or county manager, appointed by the Governor from a list of three eligible persons nominated by the North Carolina Association of County Commissioners.

<120-159. Terms. Members, other than the ex-officio member, shall be appointed for one year terms beginning July 1, 1986, and subsequently for two year terms beginning July 1, 1987 and biennially thereafter. Other than the ex-officio member, a member eligible when appointed may continue for the remainder of the term regardless of the member's continued eligibility for the category.

<120-160. Compensation. Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are state officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5.

<120-161. Facilities and staff. The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the Institute of Government, the Local Government Commission, the Department of Natural Resources and Community Development, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission.

<120-162. Function. No bill to incorporate a municipality may be introduced in either house of the General Assembly without the recommendation of the Commission.

Part 2. Procedure for Incorporation Review.

<120-163. Petition. (a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by 15% of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The petitioners shall pay to the county board of elections a fee of 25 cents per name to be verified. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within fifteen working days of receipt.

(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The proposed municipality may not contain any non-contiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections, and must include the filing fee provided by subsection (e) of this section. The filing fee is intended to partially defray the costs of review.

(e) The filing fee is $300.00 for a proposed municipality with a population of under 1,000, $600.00 for a proposed municipality with a population of 1,000 to 4,999, and $1,000.00 for a proposed municipality with a population of 5,000 and over.

(f) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session.

(g) Notwithstanding subsection (f) of this section, if a proposal is submitted after the deadline provided by that subsection, a petition must be submitted to the Commission at least 120 days before the General Assembly reconvenes after an adjournment of at least 10 days in order for the Commission to make a recommendation to that reconvened session.

<120-164. Notification. (a) Not later than five days before submitting the petition to the Commission, the petitioners shall notify:

(1) the board or boards of county commissioners of the county or counties where the proposed municipality is located;

(2) all cities within that county or counties; and

(3) all cities in any other county that are within five miles of the proposed municipality

of the intent to present the petition to the Commission.

(b) The Petitioners shall also publish, one per week for two consecutive weeks, with the second publication no later than seven days before sumbitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission.

<120-165. Initial Inquiry. (a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part.

<120-166. Additional criteria; nearness to another municipality. (a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, provided that if the nearby municipality is not substantially located in any county in which the proposed municipality is located, the Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 or over, according to the most recent decennial federal census.

(b) For the purpose of this section, a municipality is substantially located within a county if 25% or more of its population is located within that county, according to the most recent estimates of the Office of State Budget and Management.

(c) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) the proposed municipality is entirely on an island that the nearby city is not on;

(2) the proposed municipality is separated by a major river or mountain ridge from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) the nearby municipality by resolution expresses its approval of the incorporation; or

(4) an area of at least 50% of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved.

<120-167. Additional criteria; population. The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least 250 or a seasonal population of at least 500.

<120-168. Additional criteria; development. Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound, the Commission may not make a positive recommendation unless 40 percent of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants.

<120-169. Additional criteria; area unincorporated. The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by G.S. 153A-1(1).

<120-170. Findings as to services. The Commission may not make a positive recommendation unless it finds that the proposed municipality can provide at a reasonable tax rate the services requested by the petition, and finds that the proposed municipality can provide at a reasonable tax rate the types of services usually provided by similar municipalities. In making findings undeer this section, the Commission shall take into account municipal services already being provided.

<120-171. Procedures if findings made. (a) If the Commission finds that it may not make a positive recommendation because of the provisions of G.S. 120-166 through G.S. 120-170, it shall make a negative recommendation to the General Assembly. The report to the General Assembly shall list the grounds on which a

negative recommendation is made, along with specific findings. If a negative recommendation is made, the Commission shall notify the petitioners of the need for a metes and bounds description if the proposal is to be considered by the General Assembly. At the request of a majority of the members of the interim board named in the petition, the Commission may conduct the public hearing provided by subsection (c) of this section, and forward any comments or fundings made as a result of that hearing along with the negative recommendation.

(b) If the Commission determines that it will not be barred from making a positive recommendation by G.S. 120-166 through G.S. 120-170, it shall require that petitioners have a metes and bounds description of the proposed municipality prepared at their expense as a condition of a positive recommendation.

(c) Upon receipt of the survey, the Commission shall hold a public hearing at a location no more than 10 miles from the proposed municipality. If the Commission determines that it is not barred from making a positive recommendation, it shall make a positive recommendation to the General Assembly for incorporation. The Commission shall transmit as part of its recommendations a summary of the public hearing in a format it determines.

(d) The report of the Commission on a petition shall be in a form determined by the Commission to be useful to the General Assembly.

<120-172. Referendum. Based on information received at the public hearing, the Commission may recommend that any incorporation act passed by the General Assembly shall be submitted to a referendum, except if the petition contained the signatures of 50% of registered voters the Commission shall not recommend a referendum.

<120-173. Modification of petition. With the agreement of the majority of the persons designated by the petition as an interim governing board, the Commission may submit to the General Assembly recommendations based on deletion of areas from the petition, as long as there are still no non-contiguous areas.

<120-174. Deadline for recommendations. (a) If the petition is timely received under G.S. 120-163(f), the Commission shall make its recommendation to the General Assembly no later than 60 days after convening of the next regular session after submission of the petition.

(b) If the petition is timely received under G.S. 120-163(g), the Commission shall make its recommendation to the General Assembly no later than the day of reconvening of the next regular session after submission of the petition.

<120-175. Applicability of Article. This article applies as to all bills proposed for introduction in either house of the General Assembly beginning upon the convening of the 1987 General Assembly. No amendment or committee substitute may be offered which proposes the incorporation of a municipality if a bill to do the same could not be introduced under this Article."

Sec. 2. G.S. 150B-63(d1) is amended by adding the following at the end: "The North Carolina Register shall also contain notices under G.S. 120-165(a).

Sec. 3. There is appropriated from the General Fund to the Legislative Services Commission for fiscal year 1986-87 the sum of seventy-eight thousand dollars ($78,000) to implement Article 20 of Chapter 120 of the General Statutes.

Sec. 4. This act is effective upon ratification.

APPENDIX E

G10LB21Y

A SENATE RESOLUTION AMENDING THE PERMANENT RULES OF THE SENATE TO IMPLEMENT THE JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS.

Be it resolved by the Senate:

Section 1. The permanent rules of the Senate are amended by adding a new Rule to read:

"RULE 42.4. No bill proposing to incorporate a municipality, or amendment or committee substitute proposing to incorporate a municipality, may be introduced in the Senate unless there is attached to the jacket of the bill, or attached to the amendment, the recommendations of the Joint Legislative Commission on Municipal Incorporations."

Sec. 2. This resolution is effective with respect to bill, amendments, and committee substitutes introduced after convening of the 1987 Regular Session of the General Assembly.

APPENDIX F

G10LB22Y

A HOUSE RESOLUTION AMENDING THE PERMANENT RULES OF THE HOUSE TO IMPLEMENT THE JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS.

Be it resolved by the House of Representatives:

Section 1. The permanent rules of the House of Representatives are amended by adding a new Rule to read:

"RULE 35.2. No bill proposing to incorporate a municipality, or amendment or committee substitute proposing to incorporate a municipality, may be introduced in the House of Representatives unless there is attached to the jacket of the bill, or attached to the amendment, the recommendations of the Joint Legislative Commission on Municipal Incorporations."

Sec. 2. This resolution is effective with respect to bill, amendments, and committee substitutes introduced after convening of the 1987 Regular Session of the General Assembly.

APPENDIX G

G10LB23Y

Public

ST: Local Charter Amendments

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CITIES AND COUNTIES TO FILE COPIES OF HOME RULE CHARTER AMENDMENTS WITH THE SECRETARY OF STATE AND THE LEGISLATIVE LIBRARY

The General Assembly of North Carolina enacts:

Section 1. Part 4 of Article 4 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"<153A-64. Filing Results of election. If the resolution is approved under G.S. 153A-61, a copy of the resolution and a copy of the abstract of the election shall be filed with the Secretary of State and with the Legislative Library."

Sec. 2. Part 4 of Article 5 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"<160A-111. Filing copies of charter amendments. The city clerk shall file a copy of any charter amendment adopted under this Part with the Secretary of State and the Legislative Library.

Sec. 3. G.S. 160A-496(b) is amended by adding the following new language at the end: "The city clerk shall file a copy of the ordinance with the Secretary of State and with the Legislative Library."

Sec. 4. This act applies with respect to resolutions approved, and amendments and ordinances adopted, on or after September 1, 1986.

APPENDIX H

G10LB24Y

Public

ST: Definition of City

A BILL TO BE ENTITLED

AN ACT TO MAKE THE DEFINITION OF A CITY THE SAME UNDER THE CITY AND COUNTY LAWS, AND TO CONFORM TO AN ATTORNEY GENERAL'S OPINION AS TO THE ELIGIBILITY OF CITIES INCORPORATED BEFORE 1945 FOR POWELL BILL ALLOCATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-1(2) is amended by adding the following at the end: "The terms 'city' or 'incorporated municipality' do not include a municipal corporation that, without regard to its date of incorporation, would be disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of status as a city under this sentence shall not affect the levy or collection of any tax or assessment, or any criminal or civil liability, and shall not serve to escheat any property until five years after the end of such status as a city."

Sec. 2. G.S. 105-472 is amended by deleting "incorporated cities and towns", and substituting "cities as defined by G.S. 153A-1(1)".

Sec. 3. G.S. 105-33(f) is amended by adding the following at the end: "For the purpose of this subsection, a municipality does not include an incorporated municipality unless it is a city as defined by G.S. 153A-1(1), but such lack of status as a city does not prevent it from being an "unincorporated place or town" as defined by this subsection.

Sec. 4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"<136-41.2A. Eligibility for funds; municipalities incorporated before January 1, 1945. (a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality.

(b) The provisions of this section apply only to municipalities incorporated prior to January 1, 1945."

Sec. 5. Section 3 1/2 of Chapter 854, Session Laws of 1963 is repealed.

Sec. 6. G.S. 136-41.2(d) as it appears in the 1981 Replacement Volume 3B of the General Statutes is reenacted.

Sec. 7. This act shall become effective September 1, 1986.